

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 608 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

HIRALAL RAINGAJI MALI

Versus

DEESA NAGRIK SAHAKARI BANK LTD.

Appearance:

MR DK ACHARYA for Petitioner

MR VIPUL S. MODI, for the respondents.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 15/04/96

ORAL JUDGEMENT

Rule. Mr.D.K.Acharya, learned Advocate for the petitioner, seeks leave to delete the names of respondents No.2 and 3. Leave granted. Names of respondents No.2 and 3 stand deleted. Mr.V.S.Modi, learned Advocate, waives service of notice of rule on

behalf of the respondent No.1.

In the facts of the case, the Revision Application is finally heard today.

This Revision Application arises from the execution proceedings on basis of the award dated 12.2.1993 passed by the learned Registrar's Nominee, Board of Nominees, Mehsana, in Arbitration Suit No.274/92 whereby award was passed for Rs.1,51,558-60 ps. against the petitioner and the respondents No.2 and 3. On basis of the said award, it appears that the plaintiff-judgment creditor filed Execution Application claiming Rs.1,58,333-10 ps. and interest and costs awarded in the judgment.

The said Execution Application came to be registered as Execution Application No.18/95 in the Court of Civil Judge (J.D.) at Deesa. By the application Exh.12, the plaintiff judgment-debtor contended that the plaintiff-Bank would be entitled to recover Rs.1,75,232.26 ps. as per the award and interest accrued thereon, plus costs of Rs.1,800/- and the execution-costs. The petitioner further contended that he was prepared to deposit the said amount and on that amount being deposited, his Motor Truck bearing No.GRO 4625 be ordered to be released.

The Executing Court, by the impugned order, directed the petitioner to deposit Rs.2,26,668/- failing which Jamgam warrant was ordered to be issued. The petitioner has questioned the legality of the said order passed below application Exh.12 contending, inter alia, that there is no basis for the Executing Court to arrive at the amount of Rs.2,26,668/-, inasmuch as in the Execution Application itself the amount claimed by the judgment creditor is Rs.1,58,333-10 ps. and interest. Mr.D.K. Acharya, learned Advocate appearing for the petitioner, has produced the certified copies of all these execution proceedings.

Mr.V.S. Modi, learned Advocate appearing for the respondent-Bank, has contended that the learned Registrar's Nominee has awarded interest at the rate of nineteen-and-a-half per cent and having calculated at that rate the amount would be rupees two lakhs and odd and there may be mistake in quantifying the amount as total amount of Rs.1,58,333-10 ps. Be that as it may, Mr.Acharya makes a statement that he is prepared to pay the amount as awarded by the Registrar's Nominee and the interest accrued thereon and the costs of the proceedings

and on that amount being paid by the petitioner judgment-debtor, his motor truck is sought to be released. There is no basis in the impugned order as to how the amount of Rs.2,26,668/- came to be quantified as due to the judgment-creditor. Mr.V.S. Modi also states that there may be some mistake in mentioning the amount in the execution application. Apart all these things, if the judgment-debtor is prepared and willing to pay the requisite amount under the award and the interest accrued thereon and the costs of the proceedings, there should not be any difficulty for the executing Court in calculating the correct amount payable by the judgment-debtor and on deposit of the said amount, the motor truck would be ordered to be released. Under the circumstances, the impugned order being without any basis for calculating the amount of Rs.2,26,668/-, is liable to be quashed.

In the result, the Civil Revision Application is allowed. The impugned order is quashed. The matter is remanded back to the Executing Court, i.e. the Court of the learned Civil Judge (J.D.), Deesa, for calculating the correct amount payable by the judgment-debtor on basis of the execution application along with the interest and costs thereon, and on the said amount as is quantified on correct calculation being deposited by the judgment-debtor, the Court may pass necessary orders for releasing the motor truck of the petitioner. Rule is accordingly made absolute. No order as to costs.
